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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,378	08/20/2003	Scott Milton Fry	TUC920030083US1	6135
45216	7590	08/17/2007		
Kunzler & McKenzie 8 EAST BROADWAY SUITE 600 SALT LAKE CITY, UT 84111			EXAMINER COUGHLAN, PETER D	
			ART UNIT	PAPER NUMBER
			2129	
			MAIL DATE	DELIVERY MODE
			08/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/644,378	Applicant(s) FRY ET AL.	
	Examiner Peter Coughlan	Art Unit 2129	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.


Continuation of 11. does NOT place the application in condition for allowance because: Regarding the specification objection, the objection stands based on understanding of 'natural language.' Paragraph 0112 cites three fuzzy set levels of 0.0, 0.178 and 0.78. According to Fig. 6A, there are areas of overlap between bad and marginal as well as marginal and good. Input and outputs regarding results in these overlap areas using natural language with individual understanding of the words is inherently unstable and undeterminable.

The claims and specification fall short when determining a practical application for the invention. Generating a value which relates to a failure of a device has no practical application unless that information is used in some manner. Without it, the results is a number or value without a purpose or practical application. Rejection under 35 U.S.C. §101 stands.

Regarding the 36 U.S.C. §102 rejection, it is known within the art that computers use memory or 'storage media.' Additionally, it is implied that there is a system which is used to access the memory or 'storage media' A storage system is an electrical device. Per the application specification in 0102, 'fuzzy logic is based on natural language.' 'Fuzzy logic' of applicant is equivalent to 'fuzzy and adaptive fuzzy systems' of Awadallah. (Awadallah, abstract, p249, C1:7-46, Figure 3) 'Generate machine readable code' of applicant is produced by the 'computer simulations' of Awadallah. (Awadallah, p245, C1:18 through C2:21) 'Test module' of applicant is equivalent to 'training' of Awadallah. (Awadallah, p249, C1:20-21) 'Allow revisions' of applicant is equivalent to 'adjust the system parameter set' of Awadallah. (Awadallah, p249, C1:29-48) The Examiner corrected the typographical error of Awadallah. The Examiner disagrees with the applicant and sees 'performance characteristics' being equivalent to 'failure prediction.' The Examiner disagrees with the applicant is sees training of a neural network as equivalent to 'testing of machine readable code with sample data.'

'Failure prediction' can be one element of 'performance characteristic.' Awadallah uses a neural network which can be trained or has 'learning capabilities' or can 'adjust.'

A computer which contains a neural network for determining electrical devices performance contains a storage system(memory), an editor (interface), code generator (results), test module (training), revision module(learning abilities).


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